

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

CEDAR GROVE COMPOSTING, INC.,

Appellant,

v.

PUGET SOUND CLEAN AIR AGENCY,

Respondent.

PCHB NOS. 10-044, 10-045, 10-120,  
10-130, 10-131, 10-132, 10-147, 10-148,  
10-149, 10-150, & 10-154

FINDINGS OF FACT, CONCLUSIONS  
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Cedar Grove Composting, Inc. (Cedar Grove), filed separate appeals<sup>1</sup> with the Pollution Control Hearings Board (Board), challenging eleven penalties issued by the Puget Sound Clean Air Agency (PSCAA) for alleged violations of PSCAA air quality regulations pertaining to the emission of odors.

Prior to the hearing on this matter, both parties filed motions for partial summary judgment. The Board sent a letter to the parties on February 7, 2011, informing them that the Board decided to grant PSCAA's Motion to Dismiss Issues 23 and 28, and to deny Cedar Grove's Motion for Summary Judgment on Issues 1, 7, and 15. Cedar Grove also filed a separate Motion in Limine to exclude the testimony of PSCAA's inspectors on the basis their methods of investigation are not generally accepted in the scientific community. The Board denied Cedar Grove's Motion in Limine and informed the parties of its decision prior to hearing.

<sup>1</sup> On July 28, 2010, the Board issued an Order of Consolidation. The Board issued a Second Order of Consolidation on August 12, 2010, and a Third Order of Consolidation on November 8, 2010. Two cases were dismissed by a separate order because the penalties associated with those appeals were withdrawn.

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1 Following the hearing the Board issued its separate written orders related to the issues raised on  
2 summary judgment and the Motion in Limine.<sup>2</sup> In addition, the City of Marysville filed a  
3 Motion for Leave to File an Amicus Brief in these proceedings, which was opposed by Cedar  
4 Grove. The Board denied the City of Marysville's motion.

5 The Board, consisting of Bill Lynch, Presiding, Andrea McNamara Doyle, Chair, and  
6 Kathleen D. Mix, Member, held a hearing on this matter on February 28 through March 4, 2011.  
7 Attorneys Svend A. Brandt-Erichsen and Alyssa Moir represented Cedar Grove. Attorney  
8 Jennifer A. Dold represented PSCAA. Court-reporting services were provided by Olympia  
9 Court Reporters.

10 The parties agreed to the following legal issues in this case:<sup>3</sup>

- 11 1. Did Cedar Grove Composting, Inc. (Cedar Grove) violate Agency Regulation  
12 I, Section 9.11(a) by causing or allowing the emission of odors which  
13 unreasonably interfered with the enjoyment of life and property, on or about  
14 August 31, 2009 in the vicinity of 15601 258<sup>th</sup> Place Southeast, Issaquah,  
15 WA., and on or about September 3, 2009 in the vicinity of 15562 207<sup>th</sup> Place  
16 Southeast, Renton, WA., as alleged in Civil Penalty No. 09-305CP?
- 17 2. Based on all the evidence presented in this matter, is the amount of Civil  
18 Penalty No. 09-305CP (\$22,000.00) reasonable, considering the nature of the  
19 violations, the prior history of Cedar Grove, and the actions Cedar Grove  
20 took in response to the violations?
- 21 3. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or  
allowing the emission of odors which unreasonably interfered with the  
enjoyment of life and property, on or about August 24, 2009, in the vicinity  
of 1808 2<sup>nd</sup> Street, Marysville, WA., as alleged in Civil Penalty No. 09-  
306CP?

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<sup>2</sup> Order Denying Motion in Limine (May 18, 2011); Order on Summary Judgment (May 25, 2011).

<sup>3</sup> The legal issues governing this case are established in the Board's Second Pre-Hearing Order issued on November 8, 2010.

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4. Based on all the evidence presented in this matter, is the amount of Civil Penalty No. 09-306CP (\$14,000.00) reasonable, considering the nature of the violations, the prior history of Cedar Grove, and the actions Cedar Grove took in response to the violations?
5. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or allowing the emission of odors which unreasonably interfered with the enjoyment of life and property, on or about July 20, 2010 in the vicinity of 24850 Southeast Mirrmont Drive, Issaquah, WA., as alleged in Civil Penalty No. 10-223CP?
6. Based on all the evidence presented in this matter, is the amount of Civil Penalty No. 10-223CP (\$15,000.00) reasonable, considering the nature of the violations, the prior history of Cedar Grove, and the actions Cedar Grove took in response to the violations?
7. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or allowing the emission of odors which unreasonably interfered with the enjoyment of life and property, on or about July 21, 2010, in the vicinity of 14849 204<sup>th</sup> Avenue Southeast, Renton, WA., as alleged in Civil Penalty No. 10-224CP?
8. Based on all the evidence presented in this matter, is the amount of Civil Penalty No. 10-224CP (\$15,000.00) reasonable, considering the nature of the violations, the prior history of Cedar Grove, and the actions Cedar Grove took in response to the violations?
9. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or allowing the emission of odors which unreasonably interfered with the enjoyment of life and property, on or about July 30, 2010, in the vicinity of 24850 Southeast Mirrmont Drive, Issaquah, WA., as alleged in Civil Penalty No. 10-231CP?
10. Based on all the evidence presented in this matter, is the amount of Civil Penalty No. 10-231CP (\$15,000.00) reasonable, considering the nature of the violations, the prior history of Cedar Grove, and the actions Cedar Grove took in response to the violations?
11. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or allowing the emission of odors which unreasonably interfered with the enjoyment of life and property, on or about August 15, 2010, in the vicinity of 14913 175th Avenue Southeast, Renton, WA., as alleged in Civil Penalty No. 10-232CP?
12. Based on all the evidence presented in this matter, is the amount of Civil Penalty No. 10-232CP (\$15,000.00) reasonable, considering the nature of the violations, the prior history of Cedar Grove, and the actions Cedar Grove took in response to the violations?

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- 1 13. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or  
2 allowing the emission of odors which unreasonably interfered with the  
3 enjoyment of life and property, on or about August 23, 2010, in the vicinity  
4 of 15717 203rd Avenue Southeast, Renton, WA., as alleged in Civil Penalty  
5 No. 10-233CP?
- 6 14. Based on all the evidence presented in this matter, is the amount of Civil  
7 Penalty No. 10-233CP (\$15,000.00) reasonable, considering the nature of the  
8 violations, the prior history of Cedar Grove, and the actions Cedar Grove  
9 took in response to the violations?
- 10 15. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or  
11 allowing the emission of odors which unreasonably interfered with the  
12 enjoyment of life and property, on or about August 6, 2010, in the vicinity  
13 of 20715 Southeast 135<sup>th</sup> Street, Issaquah, WA., as alleged in Civil Penalty No.  
14 10-246CP?
- 15 16. Based on all the evidence presented in this matter, is the amount of Civil  
16 Penalty No. 10-246CP (\$15,000.00) reasonable, considering the nature of the  
17 violations, the prior history of Cedar Grove, and the actions Cedar Grove  
18 took in response to the violations?
- 19 17. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or  
20 allowing the emission of odors which unreasonably interfered with the  
21 enjoyment of life and property, on or about August 28, 2010, in the vicinity  
of 15722 203<sup>rd</sup> Avenue Southeast, Renton, WA.; 15717 203rd Avenue  
Southeast, Renton, WA.; 20550 Southeast 158<sup>th</sup> Street, Renton, WA.; 15629  
203<sup>rd</sup> Avenue Southeast, Renton, WA.; and 15639 203<sup>rd</sup> Avenue Southeast,  
Renton, WA. as alleged in Civil Penalty No. 10-247CP?
18. Based on all the evidence presented in this matter, is the amount of Civil  
Penalty No. 10-247CP (\$15,000.00) reasonable, considering the nature of the  
violations, the prior history of Cedar Grove, and the actions Cedar Grove  
took in response to the violations?
19. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or  
allowing the emission of odors which unreasonably interfered with the  
enjoyment of life and property, on or about August 29, 2010, in the vicinity  
of 15722 203rd Avenue Southeast, Renton, WA., as alleged in Civil Penalty  
No. 10-248CP?
20. Based on all the evidence presented in this matter, is the amount of Civil  
Penalty No. 10-248CP (\$15,000.00) reasonable, considering the nature of the  
violations, the prior history of Cedar Grove, and the actions Cedar Grove  
took in response to the violations?
21. Did Cedar Grove violate Agency Regulation I, Section 9.11(a) by causing or  
allowing the emission of odors which unreasonably interfered with the

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1 enjoyment of life and property, on or about May 25, 2010, in the vicinity of  
2 6902 59<sup>th</sup> Drive Northeast and 6828 59<sup>th</sup> Drive Northeast, Marysville, WA.,  
as alleged in Civil Penalty No. 10-253CP?

3 22. Based on all the evidence presented in this matter, is the amount of Civil  
4 Penalty No. 10-253CP (\$13,000.00) reasonable, considering the nature of the  
violations, the prior history of Cedar Grove, and the actions Cedar Grove  
took in response to the violations?

5 23. Is the classification scheme specified in PSCAA Regulation I, Section  
6 9.11(b) to determine whether odors violate PSCAA Regulation I, Section  
7 9.11(a) arbitrary and capricious or contrary to law?

8 24. Is the way in which PSCAA applies the odor intensity classification scheme  
set out in PSCAA Regulation I, Section 9.11(b) arbitrary and capricious?

9 25. Are the methods and procedures PSCAA uses to identify potential odor  
10 sources and differentiate between multiple odor sources arbitrary and  
11 capricious?

12 26. Are the methods and procedures PSCAA uses to attribute a specific odor  
complaint to a specific source arbitrary and capricious?

13 27. Are PSCAA inspectors adequately trained to determine whether odors from a  
14 facility violate PSCAA Regulation I, Section 9.11(a)?

15 28. Can a facility that has adopted and is implementing the best available control  
16 technology for controlling odors be cited for a violation of PSCAA  
17 Regulation I, Section 9.11(a)?

18 29. In issuing the Notice of Violation and Civil Penalties that are the subject of  
19 this appeal, did PSCAA erroneously attribute to Cedar Grove's facilities  
20 odors that originated from one or more other sources that are not under Cedar  
21 Grove's ownership or control?

22 The Board received the sworn testimony of witnesses, admitted exhibits, and heard  
23 arguments on behalf of the parties. Having fully considered the record, the Board enters the  
24 following:

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1 **FINDINGS OF FACT**

2 **I. BACKGROUND**

3 [1]

4 Cedar Grove operates commercial composting facilities in Maple Valley (*Exs. R-13, R-*  
5 *31*) and in Everett (*Exs. R-14, R-30*) in accordance with permits issued by PSCAA, the  
6 Snohomish County Health Department, and the King County Health Department. Although the  
7 county health departments only require annual reports, Cedar Grove provides them with monthly  
8 reports. Cedar Grove is regulated under the solid waste laws. The Cedar Grove facilities are the  
9 largest commercial composting facilities in the state of Washington, and some of the largest in  
10 the United States. *Bartlett Testimony; Exs. R-124, R-125, R-126, R-127, R-128, R-129.*

11 [2]

12 The Cedar Grove Maple Valley facility is located adjacent to the southern boundary of  
13 the Cedar Hills Landfill and is elevated above the Maple Valley floor in an area surrounded by  
14 hills, trees, and valleys. *Ex. R-13.* The Everett facility is located west of Interstate 5 on the south  
15 side of Steamboat Slough in an area of relatively flat land and few trees. *Ex. R-14.*

16 [3]

17 Both the Maple Valley facility and Everett facility have an operation and maintenance  
18 plan that contains a provision addressing odor control. *Exs. A-6, § 1.4.1.9, at 1-7; A-7 § 3.4.1.6,*  
19 *at 3-6.* Although these facilities use different methods of composting (positive aeration and Gore  
20 covers at Everett, negative aeration at Maple Valley), both are designed to keep the piles aerobic.

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1 Getting the feedstock mixture right is important in keeping odors reduced because the piles need  
2 porosity to allow air through, and nitrogen as food for the microbes. *Bartlett Testimony*.

3 [4]

4 Cedar Grove started accepting food waste as part of their composting operation in 2004 –  
5 depending on the city. Although food waste only comprises six percent of the waste stream, it  
6 did increase Cedar Grove’s challenge in managing composting odors, and required use of newer  
7 technology, such as the Gore cover. Evaluations have shown that including food waste in the  
8 residential mixed waste stream can actually decrease odors because much of it is not actually  
9 food and is instead cardboard (i.e. food-soiled packaging such as pizza boxes) that positively  
10 affect the carbon content and ratio of the waste. *Bartlett Testimony*. King County Health  
11 Department authorized Cedar Grove to accept food waste within the last two years. *Hess*  
12 *Testimony*.

13 [5]

14 PSCAA issued Cedar Grove a Notice of Violation (NOV) and a Civil Penalty for odor  
15 violations at the Maple Valley facility in 2004, and two odor-related NOVs for the Everett  
16 facility in 2008. These NOVs were traced to operational issues at the facilities, and Cedar Grove  
17 instituted the necessary changes. *Bartlett Testimony*; *Exs. R-67, R-202, R-203, R-206, A-19, A-*  
18 *22, A-23*. Odor complaints continued in the areas around both Cedar Grove facilities despite the  
19 improvements made pursuant to the settlement of these NOVs. With the continuation of odor  
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1 complaints from the surrounding area, PSCAA inspectors concluded that the settlement had not  
2 been effective in achieving necessary odor reduction. *Hess Testimony*.

3 [6]

4 In June 2010, a public hearing was held at Maple Valley Elementary School to address  
5 odors in the community. Approximately 60 to 70 people came to the hearing. During 2009-  
6 2010 Mr. Bartlett, the General Manager for Cedar Grove, believed that a lot of complaints that  
7 were being directed towards Cedar Grove were meteorologically impossible, and were really  
8 attributable to other sources. Cedar Grove proposed to PSCAA that a third party “odor panel” be  
9 put in place to assess the sources and seriousness of the odors. *Bartlett Testimony*.

10 [7]

11 PSCAA Regulation I, § 9.11 states PSCAA’s nuisance standard. It includes specific  
12 requirements for how the nuisance standard must be enforced for odor, and includes an odor  
13 scale. In order to determine that an odor had violated PSCAA Regulation I, § 9.11, the following  
14 three conditions must be met: (1) an agency representative must document an odor at a level 2 or  
15 greater on the odor scale;<sup>4</sup> (2) the person making the complaint must provide an affidavit  
16 demonstrating that he or she has experienced air contaminant emissions in sufficient quantities  
17 and such characteristics and duration so as to unreasonably interfere with their enjoyment of life  
18 and property; and (3) the agency representative must document the source of the odor.

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21 <sup>4</sup> A Level 2 odor is described as “distinct and definite, any unpleasant characteristics recognizable.” PSCAA  
Regulation I, § 9.11(b)(1).

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1 then dissipates after two hours. Ms. Anderson believes the source of the odor is Cedar Grove but  
2 is not sure. She has previously smelled odors from the nearby sewer lagoon, and knows the  
3 source of the silage-like odor is not the sewer lagoon because it has a different odor. *Anderson*  
4 *Testimony; Exs. R-35, R-36.*

5 [10]

6 After taking a formal statement from Ms. Anderson, Inspector Pedroza drove to potential  
7 sources of the odor in the general vicinity. He stopped at Everett Bark and was downwind of  
8 Pacific Topsoils, but was unable to detect the same silage type odor coming from those  
9 properties. Inspector Pedroza noted that the wind was blowing from the southwest by observing  
10 a flag at the Concrete NorWest site at no more than approximately five miles per hour. At  
11 approximately 8:08 p.m., Inspector Pedroza approached the office building at Cedar Grove and  
12 detected the same level 2 odor he detected at Ms. Anderson's residence. Inspector Pedroza also  
13 detected the same silage type odor he experienced at the complainant's property while walking  
14 downwind of the Phase II piles and Phase III piles at Cedar Grove. Inspector Pedroza attributed  
15 the source of Ms. Anderson's odor complaint to Cedar Grove. *Pedroza Testimony; Ex. R-35.*

16 [11]

17 Based upon this information, Inspector Pedroza prepared a Notice of Violation to Cedar  
18 Grove on August 26, 2009. *Pedroza Testimony; Ex. R-37.* In determining the amount of the  
19 civil penalty, Inspector Pedroza used the civil penalty worksheet, which assigns points based  
20 upon a 1-5 rating for six different gravity criteria. The total number of points assigned for the

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violation dictates the amount of the penalty. Violations of Section 9.11 are always scored as a 5 under the first gravity criteria. Previous violations of Section 9.11 by Cedar Grove were factored into the scoring of this violation. Cedar Grove was deemed to be nonresponsive in taking immediate steps to correct the violation, and nonresponsive in taking appropriate measures to prevent future violations. Inspector Pedroza rated this violation as having 16 total points, which translates into a penalty of \$14,000. No additional penalty amount was assigned to Cedar Grove on the basis of it having received an economic benefit. *Pedroza Testimony; Exs. R-49, R-206.* On December 31, 2009, PSCAA issued Civil Penalty No. 09-306CP to Cedar Grove in the amount of \$14,000. *Pedroza Testimony; Ex. R-52.*

2. Civil Penalty No. 09-305CP

A. Avila Residence (NOV 3-004241)

[12]

Nina Birnbaum has been employed by PSCAA as an inspector for over 16 years. She previously held the position of an assistant inspector for PSCAA from 1993 to 1994. *Birnbaum Testimony; Ex. R-5.* On August 31, 2009, at about 12:15 p.m., Inspector Birnbaum responded to an odor complaint at the residence of Catherine Avila located near Issaquah, approximately three miles east, northeast of Cedar Grove's Maple Valley facility. Inspector Birnbaum immediately detected a sweet silage odor at a level 2 or 3 at Ms. Avila's property, which is the same odor she detected while turning into the neighborhood from the Issaquah-Hobart Road. Inspector Birnbaum telephoned PSCAA Supervising Inspector Rick Hess, who told her that the wind was

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1 blowing from the southwest. Ms. Avila has been an Issaquah resident since 2002. Ms. Avila has  
2 asthma and sleeps with her window open. Ms. Avila describes the odor as rotting food. Ms.  
3 Avila has smelled that same odor before and after this particular incident. Sometimes the odor  
4 wakes her up, and the odor is very difficult to get out of the house once it has entered. Ms. Avila  
5 finds the intensity of the odor to be strongest in the morning, and it tends to last about four to  
6 five hours. *Birnbaum Testimony; Avila Testimony; Exs. R-12, R-38, R-39.*

7 [13]

8 After taking a formal statement from Ms. Avila, Inspector Birnbaum drove to potential  
9 sources of the odor in the general vicinity, including the Cedar Grove facility in Maple Valley.  
10 Inspector Birnbaum did not detect any odors while at the Sunset Materials site, and did not detect  
11 the same odor while at the Cedar Hills Landfill that she detected when at Ms. Avila's property.  
12 While waiting in the parking lot at the Cedar Grove facility, she detected the same sweet silage  
13 odor she had detected at Ms. Avila's residence. As she walked the Cedar Grove facility, she  
14 detected the same odor while standing on the finished product, and while standing next to the  
15 screen where the fines are removed from the finished product. Inspector Birnbaum attributed the  
16 source of the odor complaint to Cedar Grove. Inspector Birnbaum did not make a determination  
17 of the intensity of the odor while at the Cedar Grove facility. *Birnbaum Testimony; Ex. R-38.*

18 [14]

19 Based upon this information, Inspector Birnbaum prepared a Notice of Violation to Cedar  
20 Grove on September 3, 2009. *Birnbaum Testimony; Ex. R-40.* In determining the amount of the

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1 civil penalty, Inspector Birnbaum used the civil penalty worksheet and rated this violation as  
2 having 13 total points. Inspector Birnbaum indicated on the worksheet that PSCAA records did  
3 not indicate any previous compliance history. Cedar Grove was deemed to be nonresponsive in  
4 taking immediate steps to correct the violation, and nonresponsive in taking appropriate  
5 measures to prevent future violations. The 13-point total translates into a penalty of \$11,000 on  
6 the worksheet. No additional penalty amount was assigned to Cedar Grove on the basis of it  
7 having received an economic benefit. *Birnbaum Testimony; Ex. R-48*. On December 31, 2009,  
8 PSCAA issued Civil Penalty No. 09-305CP to Cedar Grove in the amount of \$22,000.<sup>6</sup>  
9 *Birnbaum Testimony; Ex. R-51*.

10 B. Schimke Residence (NOV 3-003656)

11 [15]

12 Rick Hess has more than 19 years experience as a PSCAA inspector. Inspector Hess has  
13 been a supervising inspector since 2002. *Hess Testimony; Ex. R-3*. On September 3, 2009, at  
14 approximately 8:30 a.m., Inspector Hess and PSCAA Engineer Claude Williams drove to the  
15 Maple Valley area to conduct a surveillance of the area before conducting a compliance  
16 inspection at the Cedar Grove facility. While driving southbound they detected a sweet silage-  
17 like odor, which Inspector Hess recognized from past inspections of the Cedar Grove composting  
18 facilities. They proceeded to the Maple Hills Elementary School and detected this same odor at  
19 a level 2 in front of the school at 9:16 a.m. At 9:17 a.m., they were notified that Sharon Schimke

20 \_\_\_\_\_  
21 <sup>6</sup> NOV No. 3-004241 and No. 3-003656 were combined into a single penalty of \$22,000, which reflects the  
recommended penalty amounts of \$11,000 for each of the two violations.

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1 had contacted PSCAA and complained about the odor. At approximately 9:20 a.m., Inspector  
2 Hess and Mr. Williams arrived at Ms. Schimke's property and immediately detected a strong  
3 sweet ripe silage odor at a level 2, which is the same odor they detected at the Maple Hills  
4 Elementary School. *Hess Testimony; Ex. R-41.*

5 [16]

6 Ms. Schimke has been a Maple Valley resident for 43 and one-half years. Her home is  
7 located approximately one mile north and slightly west of Cedar Grove's Maple Valley facility.  
8 Ms. Schimke sleeps with her window open, and sometimes the odor wakes her up. Ms. Schimke  
9 describes the odor as a severe rotten smell that makes her nauseous. Ms. Schimke has smelled  
10 that same odor many times before this particular incident on September 3, 2009. Ms. Schimke  
11 called PSCAA at about 9:15 a.m. on September 3<sup>rd</sup> after she got sick to her stomach when she  
12 went outside to bring in the newspaper. She had the same nauseous reaction when she went to  
13 bring in her garbage can from the curbside and to get her mail. Ms. Schimke is unable to work  
14 in the yard on days when the odor is present. The odor is very difficult to get out of the house  
15 once it has entered. Ms. Schimke finds the odor will sometimes last for a few hours, but  
16 sometimes it will last all day. *Schimke Testimony; Exs. R-12, R-42.*

17 [17]

18 After taking a formal statement from Ms. Schimke, Inspector Hess and Mr. Williams  
19 drove to potential sources of the odor in the general vicinity. Inspector Hess believed the wind  
20 was blowing generally from south of the Schimke residence. They arrived at the King County

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1 Landfill and did not detect any compost-like odors while traveling throughout the landfill site.  
2 At the property boundary shared with Cedar Grove, however, they detected the same strong  
3 sweet ripe silage type odor they had detected earlier at the Schimke residence at a level 2 on the  
4 odor scale. Inspector Hess and Mr. Williams were facing Cedar Grove's Maple Valley facility  
5 and the wind was blowing directly towards them. Inspector Hess and Mr. Williams stopped next  
6 at the Sunset Materials site and detected no silage type odor. They then proceeded to Cedar  
7 Grove. While driving up to the office at Cedar Grove, Inspector Hess and Mr. Williams  
8 observed finished product being loaded into waiting dump trucks. After arriving at the parking  
9 area in front of the office for the Cedar Grove facility, Inspector Hess detected the same sweet  
10 ripe silage odor he detected at the Maple Hills Elementary School, the Schimke residence, and at  
11 the property line between the King County Landfill and Cedar Grove. A breeze was coming  
12 from a southerly direction. Inspector Hess concluded Cedar Grove was the source of the odor  
13 violation. *Hess Testimony; Ex. R-41.*

14 [18]

15 Based upon this information, Inspector Hess prepared a Notice of Violation to Cedar  
16 Grove on September 3, 2009. *Hess Testimony; Ex. R-43.* In determining the amount of the civil  
17 penalty, Inspector Hess used the civil penalty worksheet and rated this violation as having 13  
18 total points. Inspector Hess indicated on the worksheet that PSCAA records did not indicate any  
19 previous compliance history. Cedar Grove was deemed to be nonresponsive in taking immediate  
20 steps to correct the violation, and nonresponsive in taking appropriate measures to prevent future

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1 violations. The 13-point total translates into a penalty of \$11,000 on the worksheet. No  
2 additional penalty amount was assigned to Cedar Grove on the basis of it having received an  
3 economic benefit. On December 31, 2009, PSCAA issued Civil Penalty No. 09-305CP to Cedar  
4 Grove in the amount of \$22,000. *Hess Testimony; Exs. R-50, R-51.*

5 [19]

6 On October 5, 2009, in response to the issuance of some NOVs, Cedar Grove offered to  
7 pay for a third-party odor panel because it was concerned with the subjectivity of the PSCAA  
8 inspectors. Cedar Grove did not believe level 2 odors could be present at the times specified in  
9 the NOVs. Cedar Grove was confused by the NOVs and thought there was some confusion on  
10 the part of PSCAA inspectors. *Bartlett Testimony; Ex. R-47.* PSCAA did not think the use of an  
11 odor panel was appropriate because the panel cannot assess the unreasonableness of the odor and  
12 the extent of the interference with a person's enjoyment of his or her property. PSCAA believes  
13 it would not be appropriate to delegate responsibility for making the determination to anyone  
14 other than the regulating agency. *Hess Testimony; Pedroza Testimony.*

15 [20]

16 On February 3, 2010, Cedar Grove sent a request for mitigation of civil penalties to  
17 PSCAA for Civil Penalties Nos. 09-306CP and 09-305CP. This request for mitigation was  
18 largely legal argument, with Cedar Grove asserting that it was operating in accordance with  
19 its permits, which act as a shield against the issuance of NOVs for nuisance odors; that compost  
20 is an agricultural activity exempt from nuisance odors under state law; there was no objective

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evidence establishing that a level 2 odor was present; the amount of the penalties were not justified; and many of the complaints were not meteorological possible. PSCAA denied the request for mitigation. *Exs. R-55, R-56, R-57, R-58.*

3. Civil Penalty No. 10-253CP

A. Getty Residence (NOV 3-003657)

[21]

On May 25, 2010, Inspector Hess noted a sweet silage smell while leaving an appointment in Marysville. Inspector Hess recognized it as the same smell he has experienced from many site visits to the Cedar Grove facility in Everett. Inspector Hess contacted PSCAA and asked if there were any odor complaints from residents in the Marysville area. He was told by other PSCAA staff that the agency had received a couple of complaints from residents in the area, so he proceeded to investigate them. Inspector Hess arrived at the Getty residence at approximately 10:18 a.m., and immediately detected the same sweet silage smell he observed earlier that morning. While standing in the driveway of the Getty residence, Inspector Hess determined that the smell was a level 2 odor on the odor scale. *Hess Testimony; Ex. R-61.*

[22]

Keith Getty has been a Marysville resident for five years. His home is located two and one half to three miles northeast of the Cedar Grove Everett facility. Mr. Getty stated the smell on May 25, 2010, lasted for a couple of hours, but that the odor was much stronger prior to Inspector Hess' arrival. Mr. Getty describes the smell as rotten compost. He had to close the

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1 windows to his home because of the smell. He has smelled this same odor before and since the  
2 incident on May 25, 2010. When the smell is present, he and his wife are unable to sit on their  
3 deck, work in the yard, or barbeque, and feel trapped inside their house. Mr. Getty finds the  
4 smell is most prevalent when the wind is blowing from the south. Mr. Getty signed a formal  
5 statement of complaint and gave it to Inspector Hess. *Getty Testimony; Exs. R-11, R-59, R-61.*

6 B. Thomason Residence (NOV 3-003658)

7 [23]

8 After talking with Mr. Getty, Inspector Hess spoke with Mr. and Mrs. Thomason, who  
9 live next door to the Gettys. Inspector Hess detected the same sweet silage smell at a level 2 on  
10 the odor scale as he had detected on the Getty property. Robert and Pauline Thomason have  
11 been Marysville residents since 1987. They began smelling an odor at about 6:00 a.m. on May  
12 25, 2010. The Thomasons were concerned that they would have to cancel the dinner plans they  
13 had made for that evening at their home. This smell continued into the afternoon. The  
14 Thomasons had to keep their windows and doors shut during this time and did not wish to work  
15 outside in their yard. They have smelled this same smell before and after this incident. The  
16 Thomasons signed a formal statement of complaint and gave it to Inspector Hess. Before  
17 leaving the neighborhood, Inspector Hess took a photo of the flag in the Getty's yard showing  
18 the wind was coming from the general direction from the southwest, and a photo of a wind  
19 direction indicator on top of the Thomason's shed showing the wind was coming out of general  
20 direction of south-southwest. *Hess Testimony; Thomason Testimony; Exs. R-60, R-61.*

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[24]

After leaving the neighborhood of the Getty and Thomason residences, Inspector Hess drove to potential sources of the odor in the general vicinity. He stopped at Everett Bark and determined it was not the source of the odor at the Getty and Thomason residences. Inspector Hess noted that a flag at the cement plant at the entrance to Cedar Grove indicated the wind was blowing more to the east. Inspector Hess arrived at the Cedar Grove facility at approximately 11:57 a.m. He detected a sweet silage odor at a level 2 or 3 on the odor scale at the office building and weigh scale. This is the same odor he detected at the Getty and Thomason residences. Inspector Hess observed activity at the screening and grinding area next to the tipping building. The odor was consistently present during his time at the Cedar Grove site. Inspector Hess left the Cedar Grove facility to investigate other potential sources of the odor. Inspector Hess arrived at Pacific Topsoils and did not detect the same odor that he experienced at Cedar Grove, and did not detect any odor off site from Pacific Topsoils. While driving, Inspector Hess also ruled out as the source of the odor the mudflats of the Snohomish River, the Everett Navy base, the Kimberly Clark facility, the Everett Sewage Treatment plant, Buse Lumber, and Barringer Farms. While driving northbound on the Interstate 5 crossing of Steamboat Slough, Inspector Hess again detected the identical level 2 compost odor he detected at the Getty and Thomason residences. Inspector Hess observed he was directly downwind of Cedar Grove, which was off to the east. As a result of his investigation, Inspector Hess

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1 determined that Cedar Grove was the source of the odor complaints for the Gettys and  
2 Thomasons. *Hess Testimony; Ex. R-61.*

3 [25]

4 Based upon this information, Inspector Hess prepared two Notices of Violation to Cedar  
5 Grove on May 26, 2010. *Hess Testimony; Exs. R-62, R-63.* In determining the amount of the  
6 civil penalty, Inspector Hess used the civil penalty worksheet and rated each violation as having  
7 15 total points. Inspector Hess indicated on the worksheet that PSCAA records did not indicate  
8 any previous compliance history. Cedar Grove was deemed to be nonresponsive in taking  
9 immediate steps to correct the violation. Cedar Grove was not considered to be nonresponsive in  
10 taking appropriate measures to prevent future violations. The 13-point total translates into a  
11 penalty of \$13,000 on the worksheet per violation. Inspector Hess recommended a total penalty  
12 of \$26,000. No additional penalty amount was assigned to Cedar Grove on the basis of it having  
13 received an economic benefit. On October 21, 2010, PSCAA issued Civil Penalty No. 10-253CP  
14 to Cedar Grove in the amount of \$13,000. *Hess Testimony; Exs. R-64, R-122.*

15 [26]

16 During the summer of 2010, PSCAA decided it needed greater consistency among its  
17 inspectors when recommending penalties for the Cedar Grove Maple Valley facility because it is  
18 the same facility, subject to the same regulations, and evaluated under the same criteria.  
19 Beginning on July 24, 2010, PSCAA began assigning the same ratings under its gravity criteria  
20 on the civil penalty worksheet. In particular, the previous compliance history of Cedar Grove

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1 was assigned three points, and a penalty issued to Cedar Grove in 2004 for an odor violation was  
2 taken into consideration. *Hess Testimony; Exs. R-202, R-203, R-204.*

3 [27]

4 In response to the large number of odor complaints it was receiving, PSCAA stationed its  
5 inspectors in the field during four weeks of the summer of 2010. PSCAA implemented this  
6 approach for a variety of reasons related to its ability to respond effectively to complaints. Many  
7 complaints occur during the evening and on weekends, and PSCAA had difficulty responding to  
8 the complaints on a timely basis. PSCAA inspectors would call the complainant and ask if the  
9 odor was still there, and if so, travel to the residence, and then travel to the suspected sources.  
10 PSCAA inspectors also have additional duties, such as inspecting registered sources, and  
11 inspecting asbestos projects. PSCAA also trained an employee of the City of Marysville to  
12 respond to complaints during this four-week time period. *Hess Testimony; Pedroza Testimony;*  
13 *Exs. A-117, A-118.*

14 People may file complaints with PSCAA either by voice mail, electronic mail, or in  
15 person. PSCAA staff log the complaint information into a computer system as soon as possible  
16 after the complaint is received. Among the information filed with each entry is the suspected  
17 source of the complaint. These sources are considered unverified until the inspector goes out and  
18 makes a determination. PSCAA has been providing Cedar Grove with weekly complaint logs  
19 for several years. *Hess Testimony, Pedroza Testimony; Exs. R-16, R-17, R-18, R-19, R-20, R-21*  
20 *(Maple Valley facility); Exs. R-22, R-23, R-24, R-25, R-26, R-27 (Everett facility).*

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1 unable to work outside but does not want to be inside because the smell permeates the house.  
2 Ms. Smith indicated that people do not like to visit her because of the smell. Ms. Smith signed a  
3 formal statement for Inspector Pogers, in which they both agreed the smell was present at a level  
4 2 on the odor scale. *Smith Testimony; Pogers Testimony; Exs. R-12, R-68, R-70.*

5 [30]

6 After leaving Ms. Smith's residence at approximately 1:40 p.m., Inspector Pogers  
7 investigated another odor complaint before driving to the Cedar Hills Landfill. Inspector Pogers  
8 did not detect any odor while at the landfill. When Inspector Pogers drove to the top of the hill  
9 where the office building is located on the Cedar Grove site, he detected the same odor he  
10 smelled at Ms. Smith's residence, and while northeast of the Cedar Grove site earlier in the day.  
11 Inspector Pogers determined that Cedar Grove was the source of the odor complaint from Ms.  
12 Smith. *Pogers Testimony; Ex. R-68.*

13 [31]

14 Based upon this information, Inspector Pogers prepared a Notice of Violation to Cedar  
15 Grove on July 20, 2010. *Pogers Testimony; Ex. R-71.* In determining the amount of the civil  
16 penalty, Inspector Pogers used the civil penalty worksheet and rated this violation as having 17  
17 total points. The 17-point total translates into a penalty of \$15,000 on the worksheet. Cedar  
18 Grove was deemed to be nonresponsive in taking immediate steps to correct the violation, and  
19 nonresponsive in taking appropriate measures to prevent future violations. No additional  
20 penalty amount was assigned to Cedar Grove on the basis of it having received an economic

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benefit. On September 24, 2010, PSCAA issued Civil Penalty No. 10-223CP to Cedar Grove in the amount of \$15,000. *Pogers Testimony; Exs. R-72, R-73.*

5. Civil Penalty No. 10-224CP (Nevi Residence)

[32]

On July 21, 2010, Inspector Birnbaum responded to an odor complaint at the residence of Charles Nevi near Renton. Inspector Birnbaum arrived at Mr. Nevi's residence at approximately 8:00 a.m. and immediately detected a sweet silage odor at a level 2 or 3 on the complainant's property. Inspector Birnbaum detected this same odor while driving with the windows up to Mr. Nevi's residence. *Birnbaum Testimony; Ex. R-74.* Mr. Nevi has been a Renton resident for eight years, and his home is located approximately one and one-quarter miles northwest of the Cedar Grove Maple Valley facility. He was awakened by the odor on July 21, 2010. Mr. Nevi describes the odor as a sour stench. When the odor is present he does not want to go outside. Sometimes he leaves the area because the odor permeates the house. He has experienced this odor before and since this incident. During one 30-day period, he experienced a very strong odor for 14 days. Mr. Nevi signed a formal statement for Inspector Birnbaum. *Nevi Testimony, Exs. R-12, R-75.*

[33]

After leaving Mr. Nevi's property, Inspector Birnbaum drove to potential sources of the odor in the general vicinity, including Sunset Materials, Pacific Topsoils, and the Cedar Hills Landfill. While at Sunset Materials, Inspector Birnbaum detected the same sweet silage odor she

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1 detected at the Nevi residence. The General Manager explained that Sunset Materials had Cedar  
2 Grove compost at its site, and they were turning the pile and adding sand to reduce the odor.  
3 Because of the small size of the compost pile, Inspector Birnbaum determined that Sunset  
4 Materials was not the source of the odor complaint. No similar odors were detected at the other  
5 facilities. While in the parking lot at the Cedar Grove facility, she detected the same sweet silage  
6 odor she had detected at the complainant's residence. As she walked to the tipping building at  
7 the Cedar Grove facility, she detected the same odor. Inspector Birnbaum attributed the source  
8 of the odor complaint to Cedar Grove. *Birnbaum Testimony; Ex. R-74.*

9 [34]

10 Based upon this information, Inspector Birnbaum prepared a Notice of Violation to Cedar  
11 Grove on July 21, 2010. *Birnbaum Testimony; Ex. R-76.* In determining the amount of the civil  
12 penalty, Inspector Birnbaum used the civil penalty worksheet and rated this violation as having  
13 17 total points. Cedar Grove was deemed to be nonresponsive in taking immediate steps to  
14 correct the violation, and nonresponsive in taking appropriate measures to prevent future  
15 violations. The 17-point total translates into a penalty of \$15,000 on the worksheet. No  
16 additional penalty amount was assigned to Cedar Grove on the basis of it having received an  
17 economic benefit. On September 24, 2010, PSCAA issued Civil Penalty No. 10-224CP to Cedar  
18 Grove in the amount of \$15,000. *Birnbaum Testimony; Exs. R-77, R-78.*

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1 a level 3 on the odor scale. The wind was blowing from the southeast at approximately three to  
2 five miles per hour at the time. This was the same odor Inspector Cole detected at the Smith  
3 residence. Inspector Cole arrived at the Cedar Grove facility at approximately 2:48 p.m. and  
4 detected a putrid compost odor at a level 3 on the odor scale. This was the same odor she  
5 detected at the Smith residence and while standing at the southern fence line on the Cedar Hills  
6 Landfill property. Inspector Cole attributed the source of the odor complaint to Cedar Grove.  
7 *Cole Testimony; Exs. R-79, R-80.*

8 [37]

9 Based upon this information, Inspector Cole prepared a Notice of Violation to Cedar  
10 Grove on July 30, 2010. *Cole Testimony; Ex. R-82.* In determining the amount of the civil  
11 penalty, Inspector Cole used the civil penalty worksheet and rated this violation as having 17  
12 total points. Cedar Grove was deemed to be nonresponsive in taking immediate steps to correct  
13 the violation, and nonresponsive in taking appropriate measures to prevent future violations.  
14 The 17-point total translates into a penalty of \$15,000 on the worksheet. No additional penalty  
15 amount was assigned to Cedar Grove on the basis of it having received an economic benefit. On  
16 October 1, 2010, PSCAA issued Civil Penalty No. 10-231CP to Cedar Grove in the amount of  
17 \$15,000. *Cole Testimony; Exs. R-83, R-84.*

18 [38]

19 On August 4, 2010, Inspectors Hess and Birnbaum attended a meeting at Cedar Grove to  
20 discuss potential odor sources around Cedar Grove's Maple Valley facility. Inspectors Hess and

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Birnbaum provided Cedar Grove with a map showing odor sources, weather stations, and high complaint zones. PSCAA inspectors would visit these potential odor sources in response to odor complaints, depending on wind direction, to help ensure that potential sources of odor other than Cedar Grove were being inspected. *Hess Testimony; Birnbaum Testimony; Ex. R-85 (map).*

7. Civil Penalty No. 10-246CP (Scott Residence)

[39]

On August 6, 2010, Inspector Birnbaum and Supervising Inspector Rick Hess responded to an odor complaint from the residence of Helen Scott, which is located in Issaquah. The inspectors detected a putrid compost type odor when entering the Sunset Valley Farms community. While waiting in the driveway of Ms. Scott, the inspectors detected this same odor at a level 2 on the odor scale. The wind was variable at this time. *Hess Testimony; Ex. R-85.* Helen Scott has been a resident of Issaquah for 23 years. Her home is located approximately two miles north, northwest of the Cedar Grove Maple Valley facility. She describes the odor as sweet and sour, and a pungent nauseating odor. When the odor is present she cannot go outside. She was planning on picking blueberries and working in the yard on August 6<sup>th</sup>, but she felt that she could not stay outside. She has smelled this same odor before and after this particular incident. It is necessary to close the windows when the odor is present or the smell will get into the house. Ms. Scott signed a formal statement and provided it to the inspectors. *Scott Testimony; Exs. R-12, R-85, R-86.*

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1 [40]

2 After leaving Ms. Scott's property, the inspectors drove to potential sources of the odor in  
3 the general vicinity. Inspectors Hess and Birnbaum went to every potential odor source  
4 identified on the map for the Maple Valley area (which was previously provided to Cedar  
5 Grove), with the exception of the location identified as silage.<sup>7</sup> PSCAA Inspector Dic Gribbon  
6 went to this particular location. The inspectors did not detect any compost odors at any of these  
7 locations. While driving on a road in the southwest area of the Cedar Hills Landfill property  
8 towards the open face of the landfill, the inspectors detected the same putrid compost type odor  
9 they had detected at the Scott's residence. Based upon wind direction, the inspectors attributed  
10 the source of this odor to Cedar Grove. While at the fence line adjacent to the Cedar Grove  
11 property, the inspectors detected the same putrid compost type odor they had detected at the  
12 Scott's residence. The inspectors determined an odor with an intensity of level 2 or 3 was  
13 coming from the Cedar Grove facility. The inspectors next visited the Cedar Grove facility. The  
14 inspectors detected the same putrid compost type odor they had detected at the Scott's residence  
15 as they walked through different zones of operation at the Cedar Grove facility, as well as near  
16 the finished product pile. The inspectors attributed the source of the odor complaint from Ms.  
17 Scott to Cedar Grove. *Hess Testimony; Birnbaum Testimony; Ex. R-85.*

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21 <sup>7</sup> These included both Pacific Topsoils sites, both Sunset Materials sites, the Alpine Nursery, and the Jones & Jones Horse Farm.

1 [41]

2 Based upon this information, Inspector Birnbaum prepared a Notice of Violation to Cedar  
3 Grove on August 6, 2010. *Hess Testimony; Birnbaum Testimony; Ex. R-87*. In determining the  
4 amount of the civil penalty, Inspector Birnbaum used the civil penalty worksheet and rated this  
5 violation as having 17 total points. Cedar Grove was deemed to be nonresponsive in taking  
6 immediate steps to correct the violation, and nonresponsive in taking appropriate measures to  
7 prevent future violations. The 17-point total translates into a penalty of \$15,000 on the  
8 worksheet. No additional penalty amount was assigned to Cedar Grove on the basis of it having  
9 received an economic benefit. On October 21, 2010, PSCAA issued Civil Penalty No. 10-246CP  
10 to Cedar Grove in the amount of \$15,000. *Hess Testimony; Birnbaum Testimony; Exs. R-90, R-*  
11 *91*.

12 8. Civil Penalty No.10-232CP (Balderson Residence)

13 [42]

14 Robert Booher has been employed by PSCAA as an inspector for 10 years. Prior to  
15 being employed as an inspector by PSCAA, Inspector Booher was employed as an air inspector  
16 in Montana and Ohio since 1989. *Booher Testimony; Ex. R-6*. He is familiar with other  
17 composting operations in Kitsap County, north Pierce County, and elsewhere. On Sunday,  
18 August 15, 2010, Inspector Booher responded to odor complaints in the Maple Valley vicinity.  
19 At approximately 7:00 a.m., Inspector Booher received a complaint from Robert Balderson in the  
20 Renton area. As Inspector Booher was arriving at Mr. Balderson's neighborhood, he detected a

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1 strong compost odor at a level 2 on the odor scale. The odor at Mr. Balderson's residence was  
2 the same strong compost odor at a level 2. *Booher Testimony; Ex. R-92.*

3 [43]

4 Mr. Balderson has been a Renton resident for 30 years. His home is located slightly less  
5 than three miles northwest of the Cedar Grove Maple Valley facility. He describes the odor as a  
6 sweet, sticky, nauseating compost odor. On August 15, 2010, he was awakened by the odor  
7 coming through his open bedroom window, which he had to close. Mr. Balderson normally  
8 walks his dog around 7:30 a.m., but the smell was too strong to go outside. Mr. Balderson also  
9 likes to do his outside work early in the morning before it gets too hot. He was unable to do  
10 outside work that day because the smell lasted much of the morning. He has smelled this same  
11 odor before and since this particular incident. Mr. Balderson used to work at a greenhouse and is  
12 very familiar with the smell of compost. Mr. Balderson filled out a formal statement and  
13 provided it to Inspector Booher. *Balderson Testimony; Exs. R-12, R-93.* A faint wind was  
14 coming from the east as Inspector Booher spoke with Mr. Balderson. The odor was present the  
15 entire 40 minutes Inspector Booher was at Mr. Balderson's property. *Booher Testimony; Ex. R-*  
16 *92.*

17 [44]

18 After leaving Mr. Balderson's residence at approximately 8:00 a.m., Inspector Booher  
19 drove east on the Maple Valley Highway. He detected no odors as he passed by Sunset  
20 Materials, but detected a level 3 compost odor on the odor scale as he drove along the 19500 to

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1 20000 block of the highway. As Inspector Balderson drove further east and south, the odor  
2 disappeared. Inspector Booher turned onto Cedar Grove Road and parked east of the Pacific  
3 Topsoils facility. The facility was closed and no odor was detected coming from the site.  
4 Proceeding on Cedar Grove Road, Inspector Booher approached the Cedar Grove facility, which  
5 also was closed. He detected no odors from the east side of Cedar Grove. Inspector Booher  
6 proceeded next to the Cedar Hills Landfill, which was also closed. He detected no odors from  
7 the east side of the landfill. Inspector Booher returned on the Maple Valley Highway and headed  
8 back to Mr. Balderson's neighborhood. He once again detected the same level 3 compost odor  
9 while driving on the highway. Based upon the characteristics of the odor and the wind direction,  
10 Inspector Booher attributed the source of the odor to Cedar Grove. Inspector Booher returned to  
11 Mr. Balderson's residence at approximately 9:00 a.m., and the odor was persisting there.  
12 Inspector Booher then responded to other calls. *Booher Testimony; Ex. R-92.*

13 [45]

14 Based upon this information, Inspector Booher prepared a Notice of Violation to Cedar  
15 Grove on August 30, 2010. *Booher Testimony; Ex. R-94.* In determining the amount of the civil  
16 penalty, Inspector Booher used the civil penalty worksheet and rated this violation as having 17  
17 total points. Cedar Grove was deemed to be nonresponsive in taking immediate steps to correct  
18 the violation, and nonresponsive in taking appropriate measures to prevent future violations. The  
19 17-point total translates into a penalty of \$15,000 on the worksheet. No additional penalty  
20 amount was assigned to Cedar Grove on the basis of it having received an economic benefit. On

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1 October 1, 2010, PSCAA issued Civil Penalty No. 10-232CP to Cedar Grove in the amount of  
2 \$15,000. *Booher Testimony; Exs. R-95, R-96.*

3 9. Civil Penalty No. 10-233CP (Tucker Residence)

4 [46]

5 Dic Gribbon has been employed by PSCAA as an inspector for 26 years. *Gribbon*  
6 *Testimony; Ex. R-8.* On August 23, 2010, at approximately 6:59 a.m., Inspector Gribbon arrived  
7 in the Maple Hills residential area to conduct an odor observation and detected a distinct  
8 compost odor of level 2 on the odor scale. The Maple Hills area is approximately one mile  
9 northwest of the Cedar Grove Maple Valley facility. *Gribbon Testimony; Exs. R-12, R-97.*

10 [47]

11 Pamela Tucker has been a resident of Renton for 23 years and lives in the Maple Hills  
12 neighborhood. On the evening of August 22, 2010, at about 11:30 p.m., she started smelling a  
13 sickly sweet grass odor. She called PSCAA that evening, and again on August 23, 2010, at  
14 approximately 8:00 a.m. *Tucker Testimony; Ex. R-98.* Inspector Gribbon drove to Ms. Tucker's  
15 residence at approximately 7:10 a.m. in response to the complaint she made the prior evening.  
16 No one answered the door. Inspector Gribbon left the area to respond to another complaint, but  
17 returned to Ms. Tucker's home at approximately 8:19 a.m. in response to her additional  
18 complaint after 8:00 a.m. that morning. Ms. Tucker was sleeping when Inspector Gribbon had  
19 arrived earlier in the morning. Inspector Gribbon detected a strong compost odor at a level 2 on  
20

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1 the odor scale while at Ms. Tucker's front porch and yard. The wind was blowing from the  
2 direction of the south-southeast. *Gribbon Testimony; Exs. R-12, R-97.*

3 [48]

4 When the odor is present, Ms. Tucker must shut her windows, which makes it  
5 uncomfortable when the house is hot. The smell comes into the house and stays for a long time.  
6 She is unable to garden when the smell is present. The smell even gets into her car, and she can  
7 smell the odor as she drives away. Inspector Gribbon walked the perimeter of Ms. Tucker's  
8 house and the compost odor was present the entire time at a level 2 on the odor scale. Inspector  
9 Gribbon observed Ms. Tucker's windows were closed to her house, but was able to detect the  
10 same odor at the inside the house as well. Ms. Tucker provided Inspector Gribbon with a formal  
11 statement. *Tucker Testimony; Gribbon Testimony; Exs. R-97, R-98.*

12 [49]

13 Inspector Gribbon left Ms. Tucker's residence at approximately 8:59 a.m., and the odor  
14 was dissipating. The wind direction had shifted to becoming more westerly. Inspector Gribbon  
15 investigated other potential sources of the odor, including both Sunset Materials sites, both  
16 Pacific Topsoils sites, the Pillon property, the Jones and Jones Horse Farm, and the Cedar Hills  
17 Landfill. None of these sources had the same compost odor. While driving on Cedar Grove  
18 Road towards the entrance road of the Cedar Hills Landfill, Inspector Gribbon detected the same  
19 level 2 compost odor he experienced at Ms. Tucker's home. He detected his same odor again  
20 while driving back towards the Cedar Grove entrance. While in the parking area, and while

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walking parts of the compost operation, Inspector Gribbon detected the same strong compost odor he detected at Ms. Tucker's home. Inspector Gribbon attributed the source of the odor at Ms. Tucker's home to Cedar Grove. *Gribbon Testimony; Ex. R-97.*

[50]

Based upon these observations, Inspector Gribbon hand-delivered a Notice of Violation to Cedar Grove staff. *Gribbon Testimony; Exs. R-97, R-99.* In determining the amount of the civil penalty, Inspector Gribbon used the civil penalty worksheet and rated this violation as having 17 total points. Cedar Grove was deemed to be nonresponsive in taking immediate steps to correct the violation, and nonresponsive in taking appropriate measures to prevent future violations. The 17-point total translates into a penalty of \$15,000 on the worksheet. No additional penalty amount was assigned to Cedar Grove on the basis of it having received an economic benefit. On October 1, 2010, PSCAA issued Civil Penalty No. 10-233CP to Cedar Grove in the amount of \$15,000. *Gribbon Testimony; Exs. R-101, R-102.*

10. Civil Penalty No. 10-233CP

A. Jeremy Brown Residence (NOV 3-004883)

[51]

On August 28, 2010, Inspector Kim Cole was investigating odor complaints in the Maple Hills neighborhood in Renton. At approximately 7:59 a.m., Inspector Cole arrived at the home of Jeremy Brown and detected a compost type odor at a level 2 on the odor scale. Inspector Cole noted there was no wind while at Mr. Brown's home. Mr. Brown has been a Renton resident for

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1 seven years. On August 28, 2010, the smell woke him up. He went outside the house and had to  
2 immediately retreat back inside. Mr. Brown describes the smell as organic decomposing  
3 material. When the odor is present it is very strong and they must close their windows. He is  
4 unable to walk to his garden, take his children to the pool, or to play with the children outside.  
5 When friends come to visit, the families are unable to go outside. The odor caused Mr. Brown to  
6 cancel a birthday party for his daughters one time. This particular day, they were unable to go  
7 outside until after noon. Mr. Brown is an environmental science teacher and is comfortable  
8 working with compost and around farms. This odor is different, however. The odor is very  
9 heavy in the air and can even be smelled through closed windows. Mr. Brown completed a  
10 formal statement and gave it to Inspector Cole. When Inspector Cole left his residence at 8:23  
11 a.m., she could still detect a level 2 compost odor at Mr. Brown's residence. *Cole Testimony;*  
12 *Brown Testimony; Exs. R-103, R-104.*

13 B. Tucker Residence (NOV 3-004884)

14 [52]

15 After leaving Mr. Brown's residence, Inspector Cole arrived shortly at Pamela Tucker's  
16 residence across the street. Inspector Cole detected the same compost type odor at level 2 on the  
17 odor scale, which she detected at Mr. Brown's residence. Inspector Cole also noted that there  
18 was no wind while at Ms. Tucker's home. Ms. Tucker stated this was the same odor she had  
19 experienced on August 23, 2010. Ms. Tucker is unable to open her windows to let in fresh air  
20 because of the smell outside, and the smell affects her physically. On this day, the odor woke

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her up at about 6:30 a.m. and was coming into her house through closed windows. The odor stays in Ms. Tucker's house for hours. Ms. Tucker completed a formal statement and gave it to Inspector Cole. Inspector Cole could still detect the odor at Ms. Tucker's and Mr. Brown's residences when she left in her car. *Cole Testimony; Tucker Testimony; Exs. R-103, R-107.*

C. Pfeiffer Residence (NOV 3-004885)

[53]

Inspector Cole arrived at the home of Tom and Jennifer Pfeiffer at approximately 8:45 a.m. the same morning and detected the same level 2 compost type odor as she had detected at the previous two Maple Hills residences. Inspector Cole noted there was no wind while at the Pfeiffer home. Tom and Jennifer Pfeiffer have been residents of the Maple Hills neighborhood for over 14 years. The odor was present when Ms. Pfeiffer woke up at 6:30 a.m. Ms. Pfeiffer let the pets outside and found the smell to be extremely pungent and that she could barely breathe. She describes the odor as a pungent, rotting bark. She was unable to sit on her porch with a cup of coffee that morning. Mr. Pfeiffer found the smell of compost to be very strong. He describes the odor as rotting garbage. The smell hurts his eyes, nose, and lungs. Both Mr. and Ms. Pfeiffer find the smell nauseating so that they are unable to do work outside in their yard or to do work on their recreational vehicles. The odor will fill up the house and stay there, including lingering in the clothes closet. Sometimes the odor forces them to leave the area. Both Mr. and Ms. Pfeiffer have smelled this smell before and after this particular incident. Both Mr. and Ms. Pfeiffer filled out formal statements and gave them to Inspector Cole. When Inspector Cole left

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1 the Pfeiffer residence at 9:05 a.m., the level 2 odor was still present. *Cole Testimony; Pfeiffer*  
2 *Testimony; Exs. R-103, R-105, R-106.*

3 D. Nugent Residence (NOV 3-004886)

4 [54]

5 Inspector Cole next arrived at the home of Dennis Nugent at approximately 9:12 a.m. and  
6 detected the same level 2 compost type odor she experienced at the other Maple Hills residences  
7 that morning. Inspector Cole had stopped at Mr. Nugent's home at 8:35 a.m. that morning, but  
8 Mr. Nugent was not at home. There was no wind while Inspector Cole was at Mr. Nugent's  
9 home. Mr. Nugent has been a resident of the Maple Hills neighborhood for approximately 24  
10 years. Mr. Nugent found the odor was much worse earlier in the morning, and was so bad that  
11 he had vomited. The odor prevents him from working outside in his yard and from washing his  
12 truck. Mr. Nugent takes a lot of pride in his yard and he is unable to get the needed work done.  
13 Mr. Nugent describes the odor as a rotting compost smell. His residence is only four homes  
14 away from the Maple Valley Elementary School. Mr. Nugent has a niece and nephew who go to  
15 school there, and he wonders how the children are able to go to recess. Mr. Nugent has smelled  
16 this odor before and since this particular incident. Mr. Nugent filled out a formal statement and  
17 gave it to Inspector Cole. *Cole Testimony; Nugent Testimony; Exs. R-103, R-108.*

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1 E. Faataape Residence (NOV3-004887)

2 [55]

3 Janine Faataape saw the PSCAA logo on Inspector Cole's car while Inspector Cole was  
4 speaking with Mr. Nugent and indicated that she had also contacted PSCAA with a complaint.  
5 After obtaining Mr. Nugent's formal statement, Inspector Cole went to Ms. Faataape's residence  
6 and confirmed that there was a level 2 compost type odor present. Ms. Faataape has been a  
7 resident of the Maple Hills neighborhood for 25 years. Ms. Faataape was trying to hold a garage  
8 sale that day, and the odor made it so people did not want to get out of their cars. Ms. Faataape  
9 describes the odor as a sickening sweet garbage smell. It is nauseating to her and makes her sick  
10 and gives her a headache. She finds the odor makes it hard to breathe and she does not want to  
11 be outside or to open windows. Ms. Faataape has smelled this smell before and since this  
12 particular incident. Ms. Faataape completed a formal statement and gave it to Inspector Cole.  
13 *Cole Testimony; Faatappe Testimony; Exs. R-103, R-109.*

14 [56]

15 After responding to another complaint, Inspector Cole went to investigate the potential  
16 source of the odor. Inspector Cole arrived at Sunset Materials at approximately 9:59 a.m. She  
17 detected no compost type odor, but observed that the wind was coming from the southwest at  
18 about three to five miles per hour. Inspector Cole proceeded to a Pacific Topsoils site. She  
19 detected no compost type odor but noted that the wind was still coming from the southwest at  
20 about three to five miles per hour. Next, Inspector Cole went to the Cedar Hills Landfill. While

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1 at the landfill, she detected a level 2 compost type odor at the southwest end of the landfill. This  
2 is the same odor she detected at the five residences earlier that day. Inspector Cole arrived at  
3 Cedar Grove at approximately 11:04 a.m. and detected the same odor she had detected at each of  
4 the five residences. Inspector Cole determined that Cedar Grove was the source of these odor  
5 complaints. After leaving Cedar Grove, Inspector Cole investigated the other Sunset Materials  
6 site and the other Pacific Topsoils site, but did not detect any compost type odor. *Cole*  
7 *Testimony; Ex. R-103.*

8 [57]

9 Based upon her observations on August 28, 2010, Inspector Cole sent Cedar Grove five  
10 separate Notices of Violation on September 10, 2010. *Cole Testimony; Exs. R-110, R-111, R-*  
11 *112, R-113, and R-114.* In determining the amount of the civil penalty, Inspector Cole used the  
12 civil penalty worksheet and rated these five separate violations together. She rated these  
13 violations as having a combined total of 17 total points. Cedar Grove was deemed to be  
14 nonresponsive in taking immediate steps to correct the violation, and nonresponsive in taking  
15 appropriate measures to prevent future violations. The 17-point total translates into a penalty of  
16 \$15,000 on the worksheet. No additional penalty amount was assigned to Cedar Grove on the  
17 basis of it having received an economic benefit. On October 21, 2010, PSCAA issued Civil  
18 Penalty No. 10-247CP to Cedar Grove in the amount of \$15,000. *Cole Testimony; Exs. R-115,*  
19 *R-116.*

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11. Civil Penalty No. 10-248CP (Twyla Brown Residence)

[58]

On Sunday, August 29, 2010, Inspector Cole was investigating odor complaints in the Maple Valley area. After calling some complainants from the previous evening, Inspector Cole arrived at the Pacific Topsoils facility, which was closed, and detected no odor. She then proceeded to Cedar Grove, which was also closed, and detected no odor. Inspector Cole then drove to the Cedar Hills Landfill and past Sunset Materials without detecting any odor. At approximately 8:32 a.m., Inspector Cole detected a level 2 compost type odor as she approached the intersection of 164<sup>th</sup> Avenue SE and Renton – Issaquah Road while driving west on the Renton-Issaquah Road. Inspector Cole arrived at the residence of a complainant at approximately 8:36 a.m. and detected the same level 2 compost odor she experienced at Cedar Grove the previous day. There was a slight wind from the southeast at around zero to three miles per hour. Inspector Cole attempted to contact the resident by phone, but got the resident's voice mail. Inspector Cole then responded to other complaints. Inspector Cole stopped at the other location for Pacific Topsoils and detected no odor. The wind was blowing at about three to five miles per hour. *Cole Testimony; Ex. R-117.*

[59]

At approximately 8:59 a.m., August 29, 2010, Inspector Cole arrived at the residence of Twyla Brown after approaching from a northerly direction and detected a compost type odor at a level 3 on the odor scale. Ms. Brown a resident of the Maple Hills neighborhood, approximately

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1 one mile northwest of the Cedar Grove Maple Hills facility. The odor woke her up early this  
2 morning of August 29, 2010, and it was the same compost odor her family had experienced the  
3 previous day. Ms. Brown describes the odor as pungent and sweet, like fermenting old beer  
4 bottles in a garbage can. The odor makes her nauseous, makes it hard to take a full breath, and  
5 burns her nose. On what would otherwise be a nice day, the odor prevents the family from going  
6 to the park or pool, which is about one-quarter mile from their home. The family is unable to be  
7 outside in the yard or to use their hot tub. Ms. Brown tried to play with her young children  
8 outside this morning, but the odor forced them back into the house. Ms. Brown has smelled this  
9 same odor before and after this particular incident. Ms. Brown signed a formal statement and  
10 provided it to Inspector Cole. Inspector Cole noted that there was no wind at this time. *Cole*  
11 *Testimony; Brown Testimony; Exs. R-12, R-117, R-118.*

12 [60]

13 Inspector Cole left Ms. Brown's residence to respond to other complaints. She detected  
14 the same compost type odor that she had detected while at Cedar Grove on August 28<sup>th</sup>. This  
15 was the same odor she detected at multiple locations on August 29<sup>th</sup>, including the intersection  
16 of 178<sup>th</sup> Avenue Southeast and Southeast 128<sup>th</sup> in Renton, along the Maple Valley Highway  
17 while heading south in the 18700 block, while parked downwind from Cedar Grove at the Sunset  
18 Materials site (no activity was taking place there), and near the intersection of Southeast Jones  
19 Road and 196<sup>th</sup> Avenue Southeast in Renton. Based upon the type and location of the odor,

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Inspector Cole attributed the source of the odor at the Twyla Brown residence to be Cedar Grove. *Cole Testimony; Ex. R-117.*

[61]

Based upon her observations on August 29, 2010, Inspector Cole sent Cedar Grove a Notice of Violation on September 10, 2010. *Cole Testimony; Ex. R-119.* In determining the amount of the civil penalty, Inspector Cole used the civil penalty worksheet and rated the violation as having 17 total points. Cedar Grove was deemed to be nonresponsive in taking immediate steps to correct the violation, and nonresponsive in taking appropriate measures to prevent future violations. The 17-point total translates into a penalty of \$15,000 on the worksheet. No additional penalty amount was assigned to Cedar Grove on the basis of it having received an economic benefit. On October 21, 2010, PSCAA issued Civil Penalty No. 10-248CP to Cedar Grove in the amount of \$15,000. *Cole Testimony; Exs. R-120, R-121.*

### III. DETERMINING ODOR INTENSITY

#### 1. Training of PSCAA Inspectors<sup>8</sup>

[62]

All seven PSCAA inspectors who issued Notices of Violations associated with this consolidated appeal have many years of experience as air quality inspectors and received similar

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<sup>8</sup> Cedar Grove filed a Motion in Limine shortly before the hearing on the merits to exclude testimony or evidence that would be offered by PSCAA inspectors. The Board denied Cedar Grove's Motion in Limine, which was reduced to a written order on May 18, 2011. The Board's order allowed PSCAA's inspectors to testify, and stated that any deficiencies in the inspection process identified by Cedar Grove would go to the credibility of the evidence and the weight it would be given.

1 training from PSCAA. The training for new inspectors consists of spending a lot of time going  
2 over PSCAA regulations, policies and procedures, and investigative techniques before  
3 undergoing field training. When undergoing field training, a new inspector is assigned to ride-  
4 along with each of the other 12 PSCAA inspectors as they conduct field investigations. A new  
5 inspector will observe field techniques, conduct inspections, and go over the rules with the more  
6 experienced inspector. A new inspector will spend one to four days with each of the other  
7 PSCAA inspectors. The field training lasts approximately one month. The training includes  
8 odor investigations under Section 9.11, but a new inspector may not experience an odor  
9 complaint during the time the new inspector is assigned to a particular inspector. Nevertheless,  
10 responding to odor complaints is a common part of an inspector's job. The more experienced  
11 inspectors report back to the supervising inspectors<sup>9</sup> on the progress of the new inspectors during  
12 the field training. New inspectors are expected to become fully proficient and independent  
13 following their initial training. *Hess Testimony; Pedroza Testimony.*

14 [63]

15 The training of PSCAA inspectors is ongoing. Inspectors attend a monthly meeting, plus  
16 team meetings twice a month. Inspectors also participate in federal Environmental Protection  
17 Agency (EPA) training, and one-on-one training with the supervising inspector. An air  
18 compliance forum is also held among the other air agencies within the state, as well as the  
19 Department of Ecology. The air compliance forum has training built in as a component, and  
20 there is an opportunity to exchange information. The other air agencies in this state have similar

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21 <sup>9</sup> A supervising inspector supervises approximately six other PSCAA inspectors. *Hess Testimony.*  
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1 regulations and use similar field investigation techniques to assess the intensity of odors. *Hess*  
2 *Testimony*.

3 [64]

4 PSCAA inspectors are also required to attend “smoke school,” which pertains to an  
5 inspector’s ability to determine the opacity in a plume of smoke. The EPA requires inspectors to  
6 have their ability to determine opacity recertified every six months. The Yakima Clean Air  
7 Agency provides this training. *Pedroza Testimony; Birnbaum Testimony; Cole Testimony*.

8 [65]

9 None of the seven PSCAA inspectors attended classes on odor monitoring. The PSCAA  
10 inspectors have never had their ability to smell evaluated, and their ability to differentiate  
11 intensity or types of odors has never been tested.<sup>10</sup> They generally do not know whether there  
12 are scientific methods for odor detection. The PSCAA inspectors do not know what a detection  
13 threshold is or what a recognition threshold is, and are untrained on how to use an instrument  
14 utilizing dilutions to threshold. Odor observations made by inspectors in the field are not  
15 routinely compared with other inspectors’ observations. PSCAA inspectors have not seen an  
16 odor reference scale. PSCAA inspectors are not trained to use standard descriptive terms for  
17 odors, and are generally unfamiliar with an odor wheel. PSCAA has not tried to develop  
18 standard descriptors. When applying the nuisance standard, the inspectors must evaluate the  
19 odors in relation to the complainant’s assessment of the odor, both in terms of describing the

20 \_\_\_\_\_  
21 <sup>10</sup> Inspector Pogers has had his ability to smell hydrogen sulfide at a particular concentration tested when he  
previously worked for different oil companies and a chemical company.

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1 distinct characteristics of the odor as well as independently corroborating the intensity level of  
2 the odor. *Hess Testimony; Pedroza Testimony; Birnbaum Testimony; Pogers Testimony; Cole*  
3 *Testimony.*

4 [66]

5 Supervising Inspector Hess is not sure the standard use of terms would help the PSCAA  
6 inspectors with their source determinations. He has been around the Cedar Grove Everett facility  
7 and can smell the same general odor at the tipping station, the grinder, different phases of the  
8 operation, and the finished product area. Composting is biologically active material that is  
9 decaying. Compost all smells basically the same. It is distinct from a bark operation or the open  
10 face of a landfill. *Hess Testimony.* Inspector Pedroza also notes that the odor scale used in  
11 enforcement of Section 9.11 is not a scientific numerical scale, but rather, it is intended to  
12 describe odor on a qualitative scale. *Pedroza Testimony.*

13 2. Standardizing Odor Measurement Practices

14 [67]

15 Kirk Winges is an air quality scientist and was trained in air sciences. Mr. Winges has  
16 been an air consultant since 1977 and has extensive experience in conducting odor  
17 investigations. Air modeling, which allows for the calculation of concentrations as they move  
18 out into the environment, has been a major part of Mr. Winges' career. He has conducted air  
19 quality monitoring and has trained other people in how to conduct air monitoring. Mr. Winges  
20 has also helped to develop a community measurement system. *Winges Testimony; Ex. A-193.*

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1 [68]

2 Mr. Wings observes that most odors are a complex mixture. It is his professional  
3 opinion that odors should be measured in a scientific way and that methods should be  
4 standardized so that results are verifiable, repeatable, objective, and qualitative. Sending  
5 inspectors to an “odor school” for training is similar to sending inspectors to “smoke school”  
6 because ambient odor observations are analogous to opacity observations. *Winges Testimony;*  
7 *Exs. A-194; A-195.* Mr. Wings finds it hard to assess the training of the PSCAA inspectors  
8 because it consists primarily of field observations with other inspectors, who lack formal training  
9 in making odor observations themselves. Mr. Wings believes that people can “drift” in their  
10 determination of the level of odors, and without the inspectors calibrating themselves by going  
11 out together on investigations, there is no quality control. By sending investigators out in teams,  
12 they are able to observe the same odors at the same time. The investigators are then able to  
13 compare notes and discuss what odor levels they observed. *Winges Testimony.*

14 [69]

15 Mr. Wings asserts it is important for field inspectors to be familiar with basic concepts  
16 of odor science, which can be provided in one or two days of training. Training would include  
17 learning how to use standardized methods for measuring and quantifying odor in the ambient air,  
18 how to use standardized descriptors – such as from an odor wheel, and how to read and use  
19 meteorological data. *Winges Testimony; Exs. A-194, A-195, A-197.*

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1 [70]

2 The American Society of Testing and Materials (ASTM) is an independent entity that is  
3 trying to standardize various testing methods for different things, which includes odors. ASTM  
4 established a working committee that developed testing standards for odor detection. ASTM  
5 finds that the only way to meet repeatability criteria is to select odor assessors who are similar in  
6 sensitivity. The ability of people to smell can differ. Some people are more sensitive to smell  
7 than others, and some people experience smell loss. A typical test for determining a person's  
8 ability to smell involves ranking eight bottles of a substance with varying intensities. The second  
9 part of the test involves determining which of two bottled substances had a stronger odor. Odors  
10 at low levels are hard to differentiate. *Winges Testimony; Ex. A-194.*

11 [71]

12 ASTM recommends two standardized methods for measuring and quantifying odor in the  
13 ambient air odor by a field inspector. The inspector may use either an odor intensity referencing  
14 scale (OIRS) or a field olfactometer (nasal ranger). OIRS compares the odor to a series of  
15 concentrations of a reference odor, which is usually n-butanol. A nasal ranger dilutes the  
16 ambient air with carbon-filtered air in distinct dilution ratios known as dilution to threshold.  
17 ASTM is not a regulatory body, and there is no federal regulation governing how odors must be  
18 determined. *Winges Testimony; Ex. A-194.*

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1 job for Mr. Cox and Mr. Trask to detect and monitor odors. Neither had previous experience as  
2 an air quality inspector. *Cox Testimony; Trask Testimony.*

3 [73]

4 Mr. Cox and Mr. Trask were both trained by Mr. Winges in odor monitoring and by  
5 CH2MHill on odor regulations. Mr. Cox and Mr. Trask are both familiar with odor wheels.  
6 There are many types of odor wheels, including some large, complex ones that include  
7 descriptors for all types of industry, and a simpler odor wheel containing descriptors only for the  
8 composting process. The purpose of using standard descriptors and breaking down the odors  
9 more finitely is to increase the level of understanding of what is causing the odors. Different  
10 descriptors define different parts of the composting process. Some of the descriptors used by  
11 ERMAS to describe odors in the Cedar Grove composting process include “pipe tobacco,”  
12 “caramel,” and “amaretto.” Odor wheels are generally not taken into the field, and it is unclear if  
13 either Mr. Cox or Mr. Trask has ever referred back to an odor wheel when writing their daily  
14 reports. *Cox Testimony; Trask Testimony.* Mr. Trask was also part of a group that went out into  
15 the field together to recognize different odor sources. The entire group compared their  
16 observations with each other, and an odor wheel was used as part of this process. *Trask*  
17 *Testimony.*

18 [74]

19 Mr. Cox and Mr. Trask have been trained to use a nasal ranger. The instrument fits over  
20 the person’s nose and mouth, and first measures whether the investigator is breathing too deeply

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1 or not deeply enough, and then quantifies the intensity of the odor in the ambient air. An  
2 investigator first experiences the odor in the field and then confirms the observation with the  
3 nasal ranger. The detection threshold is when the investigator starts noticing particles in the air.  
4 The recognition threshold is a higher threshold and requires more odor particles. *Cox Testimony*.  
5 Mr. Trask has only used the nasal ranger two or three times since his training. *Trask Testimony*.  
6 When winds are high, it is hard to take odor readings through the nasal ranger. There has been  
7 one instance when a nasal ranger malfunctioned. *Cox Testimony; Ex. A-198* (Daily Report on  
8 8/27/10 and 8/31/10).

#### 9 IV. DETERMINING ODOR SOURCE

##### 10 1. Use of Meteorological Data in Investigating Odor Sources

11 [75]

12 It is not standard practice for PSCAA inspectors to check weather data before issuing a  
13 Notice of Violation. PSCAA inspectors generally do not check available weather information  
14 online, but instead rely upon their own personal observations. PSCAA inspectors in the field  
15 will check weather data as a back-up to their own personal observations if they are unsure.  
16 Personal observations regarding wind direction include seeing the direction the wind is blowing  
17 a flag or the trees, tossing some grass or dirt into the air and observing the direction in which it is  
18 blown, lighting a match and observing the direction the smoke is blown, licking a finger and  
19 raising it into the air, and feeling the push of the wind in relation to the orientation of the road.  
20 PSCAA never evaluates complaints using wind data. PSCAA believes that random collections

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1 of weather data are not as reliable as an inspector's observations, but there are no agency  
2 standards for weather data use. *Hess Testimony; Birnbaum Testimony; Pogers Testimony; Cole*  
3 *Testimony; Booher Testimony*. Wind speed can be approximated by observing how a leaf will  
4 move across a yard or by seeing whether a flag lifts. *Cole Testimony*.

5 [76]

6 The duration of the odor necessary to be considered a nuisance is not specified under  
7 Section 9.11. The PSCAA inspector must get to the complainant's residence and talk to them  
8 about signing a complaint before determining the source of the odor. A PSCAA inspector's  
9 determination of the source may be based on topography, the familiarity with the area and  
10 facilities, the type of odor, or the observable weather. There is no one way to make this  
11 determination. *Hess Testimony*. PSCAA inspectors do investigate other potential sources of an  
12 odor, including stopping at potential odor sources identified by Cedar Grove even though the  
13 wind may not be blowing from the direction of these other potential odor sources. *Hess*  
14 *Testimony; Cole Testimony; Gribbon Testimony*.

15 [77]

16 ERMAS employees regularly use weather data from the Weather Underground, an online  
17 website that reports data collected from a variety of public and private meteorological stations  
18 and personal weather stations. The employees will put information into their laptop computers  
19 to show the area from which a plume would likely arrive. A patrol is stationed based upon the  
20 direction of the prevailing wind. *Cox Testimony; Trask Testimony*. ERMAS employees will use

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1 the Cedar Grove weather station and two other weather stations to help make their determination.  
2 *Bartlett Testimony*. ERMAS employees will use personal observations, such as the direction the  
3 wind is pushing a flag, to help confirm their wind findings at that moment in that area. ERMAS  
4 employees also use maps which indicate sources of potential odors in the Everett area. *Cox*  
5 *Testimony; Trask Testimony; Exs. A-191*(odor sources from the north), *A-192* (odor sources from  
6 the south and east).

7 [78]

8 Mathew Mavko is an air quality scientist and a GIS analyst. Mr. Mavko evaluates data  
9 that comes in from different monitoring stations and can prepare maps and statistical analysis  
10 based upon this information. He does modeling for the preparation of environmental impact  
11 statements and for permits. *Mavko Testimony; Ex. R-4*. Mr. Mavko prepared maps which show  
12 the NOV locations in this proceeding and the potential odor sources identified by Cedar Grove.  
13 *Mavko Testimony; Exs. R-11, R-12*. Mr. Mavko has looked at online weather data, including  
14 Weather Underground. The vast majority of stations on Weather Underground are home  
15 stations. Mr. Mavko cites to EPA Meteorological Monitoring Guidance as providing the  
16 standards for placement of meteorological monitoring equipment. Wind instruments need to be  
17 free from obstructions because obstructions affect the speed and direction of the wind. Stations  
18 also need to be maintained properly because they can be damaged by animals, and equipment  
19 may get damaged or degenerate. Mr. Mavko took a picture of a weather station in the Maple  
20 Valley- Renton area (*Ex. R-32*), and considers information from this station to be useless because

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1 the station is located between two closely sited homes. Mr. Mavko also observed another  
2 weather station on the top of a house in the Maple Hills community, but is unsure if information  
3 from this weather station has been used by ERMAS. *Mavko Testimony.*

4 2. Personal Experience with Suspected Sources

5 [79]

6 ERMAS employees will go to known odor sources to try to determine the source of an  
7 odor. Other odor sources in the Everett area include a tannery, the Tulalip Landfill, Hanson  
8 Boatworks, Sunnyside Farm, Everett Bark, the Marysville sewer works, Van Dorm Farm, and  
9 Kimberly Clark. Some of the new environmental paints used at Hanson Boatworks have a strong  
10 odor and can be smelled for miles. Many odor complaints in the Everett area can be traced back  
11 to the Marysville sewer works. If an odor is detected that may have come from Cedar Grove, the  
12 ERMAS employees go into the community to observe where the odor is present, and then go  
13 back to Cedar Grove to try and see what part of the operation may be creating the odor. The  
14 perception of odor sources can change over time as the ERMAS employees become more  
15 familiar with the odor sources. Both Mr. Cox and Mr. Trask believe they can identify the source  
16 of an odor from smelling it and can distinguish an odor from other known odor sources. *Cox*  
17 *Testimony; Trask Testimony.* For example, the Cedar Hills Landfill is distinct because it smells  
18 gassy, and like sweaty gym socks. *Trask Testimony.*

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1 [80]

2 Several of the PSCAA inspectors have considerable experience with the distinct odors at  
3 the Cedar Grove facilities and other nearby odor sources. For example, Mr. Hess has been at the  
4 Maple Valley facility approximately 25 times and the Everett facility 4-5 times. Mr. Pedroza has  
5 been to the Everett facility more than a dozen times. Ms. Birnbaum has been to the Maple  
6 Valley facility 15-20 times since 2007. Mr. Gribbon has been to the landfill adjacent to the  
7 Maple Valley facility hundreds of times. *Hess Testimony; Pedroza Testimony; Birnbaum*  
8 *Testimony; and Gribbon Testimony.*

9 3. Use of Modeling to Analyze Air Movement on Dates NOVs Occurred

10 [81]

11 Mr. Wings did some air trajectory analysis to see how air moved over time during the  
12 dates of the NOVs issued by PSCAA. He acquired meteorological data from stations on those  
13 dates, and took an average of two different values for wind speed, and did vector averaging for  
14 wind direction. The software program (Pufftrack) written by Mr. Wings is a two-dimensional  
15 tracking system that tracks the position of air particles over the topography in question for each  
16 minute based on the wind field and topographic data. It does not attempt to explain the  
17 concentrations of odors. *Winges Testimony; Ex. R-199.*

18 [82]

19 Beginning with the Everett facility on May 25, 2010, Mr. Wings started by picking four  
20 points that are frequent sources of odors: Cedar Grove, a manure compost operation, the

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1 Marysville sewer headworks, and the Tulalip Landfill. Next, he identified meteorological  
2 stations on Weather Underground. Mr. Wings then identified the Getty and Thomason homes.  
3 Finally, Mr. Wings entered in the wind direction and speed to show how the odor sources would  
4 move. There was very little wind at 6:00 a.m. in the morning, and it did not begin to pick-up  
5 until 10:15 that morning. At 10:30 a.m. the model shows the air from Cedar Grove did not get to  
6 the Getty residence, and never does reach the Thomason residence. By this time, the air located  
7 over the manure compost operation had moved over both residences, and air over the other two  
8 odor sources was moving into the area of these residences. During this time, Inspector Hess was  
9 driving through the plume from Cedar Grove. *Winges Testimony; Exs. A-207, A-208, A-209.*

10 [83]

11 Mr. Wings used Pufftrack in a similar manner to show air movement in the Everett area  
12 on August 24, 2009. Mr. Wings substituted Hanson Boatworks for the manure compost  
13 operation because of the wind direction that day. Mr. Wings' air movement model shows no air  
14 from Cedar Grove over the Anderson residence at the time of the complaint, but air from over  
15 the Marysville sewer headworks was over this residence at the time. *Winges Testimony; Exs. A-*  
16 *203, A-204, A-205.*

17 [84]

18 Mr. Wings then used Pufftrack to track air movement in the Maple Valley area during  
19 the time of the NOV's. The four odor sources he used were Cedar Grove, the Cedar Hills  
20 Landfill, the flares from the landfill, and the ponds located at the landfill. He also used data from

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1 weather stations in the Maple Hills area and Cedar Grove. On September 3, 2009, Mr. Wings'  
2 air movement model indicates that the air over the Schimke property came from the Cedar Hills  
3 Landfill rather than from Cedar Grove. *Winges Testimony; Exs. A-210, A-211*. Using this same  
4 air movement model, no air from Cedar Grove appears over: the Nevi residence on July 21,  
5 2010 (*Winges Testimony; Exs. A-212, A-213*); the Balderson residence on August 15, 2010  
6 (*Winges Testimony; Exs. A-214, A-215*); or over the Jeremy Brown residence on August 28,  
7 2010 (*Winges Testimony; Exs. A-216, A-217*).

8 [85]

9 Mr. Wings was not offering his opinion about *odor* emissions when he explained the  
10 results from his air movement model. It is difficult to simulate the movement of odor in the air.  
11 High wind speeds do not necessarily mean more dispersion of an odor, and slight wind speeds do  
12 not necessarily mean less dispersion of an odor. His model did not account for any existing  
13 odors that were over or near the residences of the complainants prior to the start time the model  
14 was simulating. Air masses that were not on his grid that originated from Cedar Grove could  
15 have moved back onto the grid. *Winges Testimony*. Plumes of odorous compounds also break  
16 apart from the movement of rising air currents, which is often dependent upon temperature.  
17 Plumes spread horizontally and vertically. Mr. Wings' model did not account for vertical air  
18 movement, nor did it account for temperature, both of which can affect the transport and  
19 dispersion of odors. *Winges Testimony; Ex. R-198*.

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[86]

After reviewing all of the testimony and the evidence, the Board finds that Cedar Grove did commit each of the 17 violations issued by PSCAA. Although the PSCAA inspectors do not have the formalized training suggested by Mr. Wings, the PSCAA inspectors have a great deal of experience and are familiar with the odor sources in their respective areas. There is no reason to think that their senses of smell are impaired or that they are unable to distinguish odors between different sources. The ERMAS inspectors essentially use the same process as the PSCAA inspectors to trace an odor back to its source. The ERMAS inspectors conceded that their perception of odor sources can change over time as they become more familiar with the odor sources in the area, and that they believe they can tell the source of an odor from smelling the odor. The state's other air authorities use the same process when investigating odor violations, and the Board does not find Cedar Grove's criticisms of PSCAA's investigative process sufficient to invalidate the results of the agency's investigations in this case.

The air movement model developed by Mr. Wings has some significant limitations. It is based upon weather data from the internet, which may or may not be accurate, it does not account for earlier air masses that were not on the grid that could have originated from Cedar Grove, and it does not account for the vertical movement of air. Most importantly, it does not purport to explain the movement or presence of odors and therefore cannot credibly contradict the personal observations of the PSCAA inspectors.

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1 The PSCAA inspectors were present at the complainants' residences at the time the  
2 complaints were made by the residents. In each situation, the PSCAA inspector corroborated  
3 unpleasant odor at the site of the complaint. These odors were all detected by the inspectors at  
4 an intensity level of 2 or above on the odor scale. The PSCAA inspectors were able to trace the  
5 source of the distinct and recognizable odors back to Cedar Grove by driving to the Cedar Grove  
6 facilities, while eliminating other potential odor sources along the way – often stopping at a  
7 potential odor source regardless of wind direction. In each case, the complainants were able to  
8 describe either a significant impact on their personal health or daily activities, or both, at their  
9 properties because of the odor from Cedar Grove, which is sufficient to establish an  
10 unreasonable interference with the enjoyment of life or their property. All of the requisite  
11 components of establishing an odor violation under PSCAA Regulation § 9.11 have been  
12 satisfied for each of the 17 NOV's.

## 13 V. ADDITIONAL CONSIDERATIONS

### 14 1. Cedar Grove's Investment in Making Improvements to Odor Emissions

15 [87]

16 Cedar Grove has invested a considerable amount of money in odor mitigation since 2008.  
17 In 2008, as part of its certification with PSCAA, Cedar Grove invested \$400,000 for a building  
18 to enclose the grinder, and \$650,000 for a grinder that would work indoors. Cedar Grove also  
19 extended the tipping building to allow large vehicles to pull in and unload in an enclosed area, at  
20 a cost of \$242,798. *Brigham Testimony.*

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1 [88]

2 In 2010, as part of a settlement agreement involving the Everett facility, Cedar Grove  
3 spent: \$100,000 on third-party odor studies; \$630,000 to divert excess feedstocks (ongoing  
4 annual cost); \$110,000 for additional personnel (annual cost); \$58,531 for roll-up doors and  
5 apron for the tipping building; \$10,000 to replace trammel screens; and \$641,848 to establish a  
6 tree barrier and windbreak. *Brigham Testimony.*

7 [89]

8 Additional expenses incurred by Cedar Grove include: \$154,000 for more third-party  
9 evaluations; \$204,758 for improvements to the tipping building; \$666,477 for a new grinder in  
10 Everett; \$890,569 for odor mitigation in the form of covers and biofilter upgrades in Maple  
11 Valley and Everett; and \$1,120,000 for a gore cover for the Phase III process in Everett to help  
12 with odor mitigation. Cedar Grove also plans to spend \$400,000 for screening at its Everett  
13 facility, and \$106,499 for covers for its finished product storage at both facilities. *Brigham*  
14 *Testimony.*

15 [90]

16 Cedar Grove has determined its total voluntary investment in odor mitigation to be  
17 approximately \$3.5 million. Taken together with the amount it spent as part of the Maple Valley  
18 settlement (\$1.4 million), and the amount it spent as part of the Everett settlement (\$1.6 million),  
19 the total amount spent by Cedar Grove on odor mitigation efforts from 2008 through early 2011  
20 is approximately \$6.5 million. *Brigham Testimony.*

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1 [91]

2 In addition to capital improvements, Cedar Grove has made operational changes in an  
3 effort to reduce odors at the facilities, including monitoring meteorological data obtained from  
4 stations installed at the facilities, implementing a prevention strategy focused on insuring  
5 incoming feedstock meets the facilities' requirements in terms of quantity and composition or is  
6 rejected, and improving inspections of all aspects of facility operations. *Bartlett Testimony; Exs.*  
7 *A-6, A-7, R-130, R-131.*

8 [92]

9 In response to NOV's issued in 2009, Cedar Grove initially raised questions about the  
10 NOV's, then denied responsibility or asserted they acted consistently with permit terms. *Exs. R-*  
11 *45, 46, 47.* Cedar Grove was not directly responsive to NOV's issued in 2010. In the PSCAA  
12 calculation of the recommended penalty using the civil penalty worksheet, PSCAA inspectors  
13 added points to the "gravity criteria" scale based on Cedar Grove's non-responsiveness and  
14 failure to take steps to prevent future violations. These points resulted in an overall higher score  
15 and higher penalty for each of the NOV's. The capital and other investments being made by  
16 Cedar Grove on an ongoing basis to improve odor control were not clearly presented to PSCAA  
17 as a mitigating factor, nor considered directly in the penalty assessment. *Hess Testimony,*<sup>11</sup>

18  
19 <sup>11</sup> Inspector Hess was unsure of the responsiveness of Cedar Grove to prevent future violations when determining  
20 the penalty amount for Civil Penalty No. 10-253CP. He noted that Cedar Grove did not make a specific response to  
21 the NOV stating what future actions it would take to mitigate future odor impacts, but Cedar Grove had provided  
PSCAA with a copy of a draft SEPA document prior to submitting a Notice of Construction Application to PSCAA.  
Ultimately, Inspector Hess did not assign any points to Cedar Grove for being nonresponsive to preventing future  
violations in determining this penalty amount. *Ex. R-64.*

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*Pedroza Testimony, Birnbaum Testimony, Cole Testimony, Booher Testimony, Pogers Testimony.*

[93]

Any Conclusion of Law deemed a Finding of Fact is hereby adopted as such.

### CONCLUSIONS OF LAW

[1]

The Board has jurisdiction over the subject matters and the parties pursuant to RCW 43.21B.110. The Board reviews the issues raised in an appeal *de novo*. The issuing agency has the initial burden of proof in cases involving penalties. WAC 371-08-485. Findings of fact are based on a preponderance of evidence standard. WAC 371-08-485(2). Preponderance of evidence means evidence that is “more probably true than not true.” *In re Sego*, 82 Wn.2d 736, 739 n.2, 513 P.2d 831 (1973).

[2]

PSCAA Regulation I, § 9.11 states:

#### **Emission of Air Contaminant: Detriment to Person or Property**

(a) It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(b) With respect to odor, the Agency may take enforcement action under this section if the Control Officer or a duly authorized representative has documented all of the following:

(1) The detection by the Control Officer or a duly authorized representative of an odor at a level 2 or greater, according to the following odor scale:

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Level 0 – no odor detected;  
Level 1 – odor barely detected;  
Level 2 – odor is distinct and definite, any unpleasant characteristics  
recognizable;  
Level 3 – odor is objectionable enough or strong enough to cause attempts at  
avoidance; and  
Level 4 – odor is so strong that a person does not want to remain present;

(2) An affidavit from a person making a complaint that demonstrates that they have  
experienced air contaminant emissions in sufficient quantities and of such  
characteristics and duration so as to unreasonably interfere with their enjoyment  
of life and property; and

(3) The source of the odor.

Nothing in this Regulation shall be construed to impair any cause of action or legal  
remedy of any person, or the public for injury or damages arising from the emission  
of any air contaminant in such place, manner or concentration as to constitute air  
pollution or a common law nuisance.

[3]

As stated earlier in the opinion, the Board found that based on all the testimony and  
evidence, it is more probably true than not that Cedar Grove did violate PSCAA Regulation I, §  
9.11 as alleged in each of the seventeen NOV's issued by PSCAA for odor violations. The Board  
concludes that all the requisites of PSCAA Regulation I, § 9.11 have been met. In reaching this  
conclusion, the Board also concludes that the overall PSCAA regulatory system is valid.  
PSCAA inspectors are adequately trained, the odor intensity classification scheme used by  
PSCAA, and the way in which PSCAA applies it is not arbitrary and capricious, the methods and  
procedures used by PSCAA inspectors to identify potential odor sources and to differentiate  
between these odor sources are not arbitrary and capricious, the methods and procedures PSCAA  
inspectors use to attribute a specific odor complaint to a specific odor source are not arbitrary

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1 and capricious, and PSCAA inspectors properly attributed the source of the odor complaints to  
2 Cedar Grove. The Board now turns to the reasonableness of the penalty.

3 [4]

4 In reaching a decision on the reasonableness of a civil penalty, the Board considers three  
5 main factors: (1) the nature of the violation, (2) the prior history of the violator, and (3) the  
6 remedial actions taken by the penalized party. *Noel Construction v. Ecology*, PCHB No. 07-150  
7 (2009); *Pacific Topsoils, Inc. v. Ecology*, PCHB Nos. 07-046 & 07-047 (2008); *Douma v.*  
8 *Ecology*, PCHB No. 00-019 (2005). The Board has previously identified that the purpose of a  
9 civil penalty is to influence behavior, encourage compliance, and deter future violations. *Watts*  
10 *Construction, Inc. and Masterson Construction, Inc. v. BCAA*, PCHB Nos. 04-032 & 037 (2005).  
11 To this end, the Board may consider whether the violator's actions were done knowingly.  
12 *Harmon v. Ecology*, PCHB No. 05-025 (2006) at 10-11. The Board may also consider whether  
13 the penalty will promote a level playing field for those businesses that expend money to comply  
14 with environmental laws and regulatory requirements. *Pacific Topsoils, Inc.* at 34. To achieve  
15 the purposes of the penalty, the Board may take into account other extenuating or exacerbating  
16 factors not adequately accounted for in the original penalty calculation. *See e.g., Harmon;*  
17 *Ostrom Company v. ORCAA*, PCHB Nos. 04-105 & 04-140 (2005). The Board also considers  
18 whether the agency set the penalty amount below the maximum amount authorized by law.  
19 *Harmon.*

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1 [5]

2 In the present case, the Board notes that there have been a large number of odor  
3 complaints associated with Cedar Grove's composting facilities. The odors emanating from the  
4 facilities have interfered with the reasonable enjoyment of life and property of a large number of  
5 surrounding residents. In that regard, the violations are serious, and have been ongoing and  
6 repetitive. Cedar Grove's responsiveness to the odor problem has been somewhat mixed. Cedar  
7 Grove has at some points in time denied responsibility for the odors, directed responsibility  
8 towards other businesses, and been non-responsive to the NOV's issued by PSCAA. On the other  
9 hand, Cedar Grove has investigated available technology options and operational changes, and  
10 has made considerable capital and operational investments to try to reduce odors from its  
11 facilities. The purpose of a penalty is to influence behavior, encourage compliance, and deter  
12 future violations. Although Cedar Grove expressed reservations about whether it was really the  
13 source of many of these odors, it still has moved forward in good faith to address these odor  
14 concerns. Although Cedar Grove's responsiveness has been mixed, the Board concludes that  
15 PSCAA erred by attributing such a large part of the combined penalty to the non-responsiveness  
16 of Cedar Grove. The Board concludes it is appropriate under these circumstances to reduce the  
17 amount of the penalty by \$50,000.

18 **ORDER**

19 The Board AFFIRMS the penalties issued by the PSCAA, but REDUCES the overall  
20 penalty amount from \$169,000 to \$119,000.

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1 SO ORDERED this 14<sup>th</sup> day of July, 2011.

2 **POLLUTION CONTROL HEARINGS BOARD**  
3 WILLIAM H. LYNCH, Presiding  
4 ANDREA MCNAMARA DOYLE, Member  
5 KATHLEEN D. MIX, Chair  
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